

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

In Re:

DUE PROCESS PROTECTIONS ACT

GENERAL ORDER NO. 392

INTRODUCTION

This General Order rescinds and replaces General Order 389.

BACKGROUND

On October 21, 2020, the President signed into law the Due Process Protections Act, Public Law No. 116-182. On December 22, 2020, the Ninth Circuit Judicial Council approved the Ninth Circuit Jury Instruction Committee’s proposed model written and oral orders addressing the Due Process Protections Act. On January 26, 2021, the District of Idaho adopted General Order 389, which, in turn, adopted the Ninth Circuit Jury Instruction Committee’s proposed orders related to the Due Process Protections Act. Accordingly, after General Order 389 was entered, judges in the District began entering the Due Process Protections Act Order – as recited in General Order 389 – in criminal matters at the time of initial appearance.

The United States has objected to these orders. Having considered these objections, and having solicited the input of the District’s Federal Defenders, the District has determined that it will rescind the language of the Due Process Protections Act Order and replace it with the language shown in the attached, revised Due Process Protections Act Order. The United States Attorney’s Office for the District of Idaho, the Federal General Order No. 392

Defender Services of Idaho, and the Federal Defenders of Eastern Washington & Idaho have agreed that the language of this revised order comports with the requirements of the Due Process Protections Act.

ORDER

IT IS HEREBY ORDERED that General Order No. 389 is **RESCINDED AND REPLACED** with this General Order No. 392.

IT IS FURTHER ORDERED that any Due Process Protection Act Orders entered in accordance with General Order 389 are **HEREBY RESCINDED AND REPLACED** with the order shown in the attached, revised Due Process Protections Act Order.

IT IS FURTHER ORDERED that the objections filed to General Order No. 389 are **DENIED AS MOOT**.

IT IS FURTHER ORDERED that the attached, revised Due Process Protections Act Order shall be entered in all criminal matters at the time of initial appearance and that incorporation by reference in docket text will comply with this order.

IT IS FURTHER ORDERED that the following oral order be given by the presiding judge at the time of initial appearance in all criminal cases in the District of Idaho:

Oral *Brady* Disclosure Order

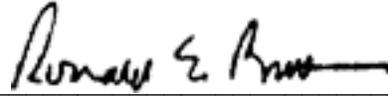
Under Criminal Rule 5(f), the government is ordered to comply with its disclosure obligations under *Brady v. Maryland* and its progeny. Failure to do so may result in sanctions. A written order will follow.

General Order No. 392

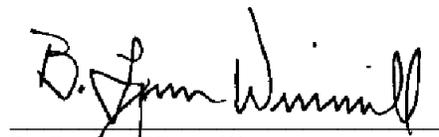
DATED: March 22, 2021



David C. Nye
Chief United States District Judge



Ronald E. Bush
Chief United States Magistrate Judge



B. Lynn Winmill
United States District Judge



Candy Wagahoff Dale
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

DUE PROCESS PROTECTIONS ACT ORDER

In order to comply with the Due Process Protections Act, the District Court for the District of Idaho has adopted the following written order to be entered in all criminal proceedings at the time of initial appearance.

Written *Brady* Disclosure Order

Under federal law, including Rule 5(f) of the Federal Rules of Criminal Procedure, *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, and all applicable decisions from the Supreme Court and the Ninth Circuit interpreting *Brady*, the government has a continuing obligation to produce all information or evidence known to the government relating to guilt or punishment that might reasonably be considered favorable to the defendant's case, even if the evidence is not admissible so long as it is reasonably likely to lead to admissible evidence. *See United States v. Price*, 566 F.3d 900, 913 n.14 (9th Cir. 2009). Accordingly, the court orders the government to produce to the defendant in a timely manner all such information or evidence.

Information or evidence may be favorable to a defendant's case if it either may help bolster the defendant's case or impeach a prosecutor's witness or other government evidence. If doubt exists, it should be resolved in favor of the defendant with full disclosure being made.

If the government believes that a required disclosure would compromise witness safety, victim rights, national security, a sensitive law-enforcement technique, or any other substantial government interest, the government may apply to the Court for a modification of the requirements of this Disclosure Order, which may include in camera review and/or withholding or subjecting to a protective order all or part of the information.

This Disclosure Order is entered under Rule 5(f) and does not relieve any party in this matter of any other discovery obligation. The consequences for violating either this Disclosure Order or the government's obligations under *Brady* and its progeny include, but are not limited to, the following: contempt, sanction, referral to a disciplinary authority, adverse jury instruction, exclusion of evidence, and dismissal of charges. Nothing in this Disclosure Order enlarges or diminishes the government's obligation to disclose information and evidence to a defendant under *Brady* and its progeny, as interpreted and applied under Supreme Court and Ninth Circuit precedent.